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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,530	05/16/2007	Clifford J. Hawkins	007193-26 US	6797

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EXAMINER

CHEN, CATHERYNE

ART UNIT	PAPER NUMBER
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1655

MAIL DATE	DELIVERY MODE
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11/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/590,530	Applicant(s) HAWKINS, CLIFFORD J.	
	Examiner CATHERYNE CHEN	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35 and 38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35, 38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Currently, Claims 35 and 38 are pending. Claims 35 and 38 are examined on the merits.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Sept. 2, 2009 has been entered.

Election/Restrictions

Applicant's election with traverse of the species reducing food intolerance in the reply filed on Dec. 11, 2008 is acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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Claims 35 and 38 are rejected under 35 U.S.C. 102(a) as being anticipated by NZHealth (prior art date Dec. 2003, http://web.archive.org/web/20031211114425/http://www.nzhealth.net.nz/herbs/ginger_ayurved.shtml).

NZHealth teaches Ginger is Zingiber officinale (page 1, paragraph 1) and it is used to flavor cookery in the form of gingerbreads, biscuits, soups, and pickles (page 1, paragraph 2). Ginger is used for helping digestion and assimilation of food, and its antiallergic properties such as food intolerance (page 1, paragraph 3). Zingibain is inherently present in ginger. Thus, using zingibain to reduce food intolerance is taught.

Claims 35 and 38 are rejected under 35 U.S.C. 102(a) as being anticipated by Tang et al. (2003, J Shandong Agricultural University, 34 (1): 15-18).

Tang et al. teaches zingibain protease on tenderization of pork, where the ginger juice makes the pork tender (Abstract). A tender pork will make the food more tolerable for consumption.

Tang et al. does not specifically teach using zingibain to reduce food intolerance and remove food intolerance. However, the method of using ginger to flavor food is considered to inherently teach the claimed method because both the reference and the claimed invention are administering the same composition to food. Thus, on the administration of zingibain to food, changes in food intolerance would have had to occur if applicant's invention functions as claimed.

Response to Arguments

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 35-38 are rejected under 35 U.S.C. 102(b) as being anticipated by "What is Ginger" (<http://www.ccba.bc.ca/discuss1/disc1/000011fc.htm>) for the reasons set forth in the previous Office Action, which is set forth below. All of Applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive.

"What is Ginger" teaches ginger contains proteolytic enzyme zingibain and it has been known in ancient times to flavor breads, sauces, curry dishes, confections, pickles, and ginger ale and is used in cooking (page 4).

"What is Ginger" does not specifically teach using zingibain to reduce food intolerance and remove food intolerance. However, the method of using ginger to flavor food is considered to inherently teach the claimed method because both the reference and the claimed invention are administering the same composition to food. Thus, on the administration of ginger to food, changes in food intolerance would have had to occur if applicant's invention functions as claimed.

Applicant argues that the use of zingibain is not inherently found in ginger and food intolerance is not taught.

In response to Applicant's argument, ginger contains zingibain; therefore, when ginger is used, zingibain is also applied. Ginger is used to flavor food and flavoring is important for improving food taste; therefore, flavoring food will make food more

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palatable, which reduces food intolerance. As long as the use is taught, it is anticipated by the reference.

Applicant argues that the amount of Zingibain used to reduce food intolerance is not obvious.

In response to Applicant's argument, the claims do not specify an amount of zingibain. Therefore, any amount of zingibain that is present in ginger would function to reduce food intolerance because ginger will flavor food and render food more tolerable.

Conclusion

No claim is allowed.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catheryne Chen whose telephone number is 571-272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen
Examiner Art Unit 1655

/Michael V. Meller/
Primary Examiner, Art Unit 1655